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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,908	08/07/2003	Reinier Lh Bolhuis	2923-552	7844

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EXAMINER	
TUNGATURTHI, PARITHOSH K	
ART UNIT	PAPER NUMBER
1643	

NOTIFICATION DATE	DELIVERY MODE
03/21/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary	Application No.	Applicant(s)	
	10/635,908	BOLHUIS ET AL.	
	Examiner	Art Unit	
	PARITHOSH K. TUNGATURTHI	1643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The applicant has timely traversed the non-final rejection in the reply filed on 12/06/2007, and a response to the arguments is set forth.

2. Claims 1-11 are pending and are under examination.

Rejections Maintained

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-11 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Oosterwijk et al (a) (WO 88/08854, Published 11/17/1988) as evidenced by the specification in view of Oosterwijk et al (b) (Seminars in Oncology. 1995. 22(1): 34-41) in view of Robinson et al (U.S. Patent 5,618,920; Issued 4/8/1997) and in view of Queen et al (U.S. Patent 5,530,101; Issued 6/25/1996). These references are cited in PTO-892 mailed on 06/20/2006.

The applicants argue that the G250 antibody was distributed under confidentiality agreements that strictly restricted the use, disclosure and distribution thereof to the third parties and submitted 132 Declaration by Chaitanya R. Divgi stating that G250 antibody described in Loh et al was provided by the inventors under confidentiality agreement that restricted its use and distribution to third parties. Further, the applicants argue that Ritter et al is not a prior art because the filing date of the instant application antedates Ritter et al.

The above arguments are carefully considered but are not persuasive. The prior art indicates that the G250 antibody was also in the possession of Durrbach et al (Cancer Gene Therapy, 1999. 6:564-571) and Gorter et al (Clin. Exp. Immunol. 1992. 87:111-116). It is noted that none of the authors in these publications are from the four members that submitted the 132 Declarations in the instant case. Hence, in view of the above-cited references and the statements made in the submitted Declarations it is

unclear what restriction were placed on the G250 antibody and hybridoma. Further, the relationship between the authors of the above references and the inventors of the present application and the Declarations is unclear based on the present record. Each of the above references provides evidence that the G250 antibody and hybridoma were available and Ritter et al indicates that the G250 antibody was on sale. In view of the newly cited evidence, the G250 antibody is believed to be publicly available at the time of filing.

> MPEP 2404.01:
> There are many factors that may be used as indicia that a biological material is known and readily available to the public. Relevant factors include commercial availability, references to the biological material in printed publications, declarations of accessibility by those working in the field, evidence of predictable isolation techniques, or an existing deposit made in accordance with these rules.

In addition, Ritter et al disclose that the G250 antibody was purchased. The inventors of RItter et al publication are completely different from the inventors of the instant application. It is not clear when the antibody was purchased, where the antibody was purchased from and whether during the sale, a statutory bar stating the seller so controls the purchaser that the invention remains out of public's hands was set. Ferag AG v. Quipp, Inc.,45 F.3d 1562, 1566, 33 USPQ2d 1512, 1515 (Fed. Cir. 1995). Hence, it is the examiner's position that the G250 antibody was publicly available at the time of the filing of the instant application.

Further, it should be noted that such distribution of the G250 antibody to many groups brings into question the restricted use of the antibody under confidentiality agreement. The prior art indicates that the antibody was available, for example, Gorter et al (which does not share any inventors in common compared to the instant

application), in 1991. The prior art certainly indicates that the G250 antibody was available to one of ordinary skill in the art. There is no clear indication if there was never any public deposition of the G250 hybridoma cells and no definitive understanding of the bars set for the distribution and usage of the G250 antibody.

Hence, claims 1-11 remain rejected.

7. Claims 1-11 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Weijtens et al (The Journal of Immunology, 157:836-843, 1996) as evidenced by the specification in view of Oosterwijk et al (b) (Seminars in Oncology. 1995. 22(1): 34-41) in view of Orlandi et al (Proc. Natl. Acad. Sci. USA, 86:3833-3837, 1989) in view of Cabilly et al (U.S Patent 4816567, Issued 3/89) in view of Robinson et al (U.S. Patent 5618920, Filed 4/94) in view of Huston et al (U.S. Patent 5258498, Issued 11/93) and in view of Queen et al (U.S. Patent 5,530,101; Issued 6/25/1996). These references are cited partly in PTO-892 mailed on 06/20/2006 and partly in PTO-892 mailed on 02/26/2007.

Please see the response to arguments in paragraph 6 above.

Conclusion

8. No claims are allowed.

9. **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Parithosh K. Tungaturthi whose telephone number is 571-272-8789. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry R. Helms, Ph.D. can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully,
Parithosh K. Tungaturthi
(571) 272-8789

/David J Blanchard/
Primary Examiner, Art Unit 1643